



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/155680

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Cty Dept On Aging-ARC in regard to Medical Assistance (MA), a telephonic hearing was held on April 17, 2014.

The issue for determination is whether the petitioner is functionally eligible for the Family Care Program (FCP).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Regina Cooper
Milwaukee Cty Dept On Aging-ARC
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner applied for the FCP on November 25, 2013.

3. The agency performed an assessment (called in the parlance, the Long Term Care Functional Screen (LTCFS)) with the petitioner in February, 2014. Based on that assessment, the agency found that the petitioner did not meet the nursing home level of care.
4. On February 3, 2014 the county agency issued written notice to the petitioner advising that she was not eligible for the FCP. The rationale for discontinuance was failure to meet level of care requirements.
5. The petitioner's diagnoses include arthritis, hypertension, respiratory condition, iritis, bursitis, endocrine disorder, acid reflux and back pain (noted as lumbosac disc on the LTCFS).
6. Per the February 2014 assessment/LTCFS, the petitioner is not independent in the performance of two activities of daily living (ADLs): bathing and dressing. The petitioner was also found to be not independent in two "instrumental activities of daily living" (IADL) – meal preparation and laundry.

DISCUSSION

The Family Care Program (FCP) is supervised by the Department of Health Services (DHS) and is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. In order to qualify for FCP services, with certain exceptions not applicable here, a person's functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a). To be found eligible, the applicant must undergo an assessment of his/her needs and functioning.

The DHS has made efforts to improve the statewide efficacy of functional assessments by designing and implementing a computerized functional assessment screening system. This system relies upon a face-to-face interview with a trained quality assurance screener. The screener met with the petitioner as part of the assessment process. Current policy requires the Department's local agent/screener to enter the assessment data into the Department's functional screen computer program. See <http://dhs.wisconsin.gov/LTCare/FunctionalScreen/Index.htm>. When the petitioner's functional ability scores were entered into the DHS algorithm, the result was a DHS conclusion that the petitioner does not have care needs at the nursing home level. Thus, the petitioner was denied FCP coverage, consistent with the DHS-directed result.

In this case, the petitioner provided more information at hearing than she did during the assessment, testifying that she also other diagnoses (hernias) and is less independent in the areas of transferring, mobility and toileting (incontinence). However, because the computer program can yield a result that is not consistent with state code, I do not even need to determine the veracity of the new information presented at hearing. Wis. Admin. Code §DHS 10.33(2)(c) describes comprehensive (a/k/a nursing home) functional capacity:

(2) DETERMINATION OF FUNCTIONAL ELIGIBILITY.

(a) *Determination.* Functional eligibility for the family care benefit shall be determined pursuant to s. 46.286 (1), Stats., and this chapter, ...

(c) *Comprehensive functional capacity level.* A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.

4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.

5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.

6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:

a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.

b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

As evidenced by the February 2014 screen, the petitioner falls within the comprehensive functional capacity definition – she cannot safely/appropriately perform two ADLs and two IADLs (item 2 above). Thus, per Code, she meets the comprehensive/nursing home level of care. Therefore, although the screening personnel followed their DHS instructions correctly, the denial of the petitioner's FCP eligibility due to failure to meet the level of care requirement was incorrect. This decision is in accord with prior decisions, FCP/140354 (Wis. Div. of Hearings & Appeals July 6, 2012, ALJ Gagnon)(DHS), FCP-11/113325 (Wis. Div. of Hearings & Appeals October 26, 2010, ALJ Schneider)(DHS), FCP-44/115906 (Wis. Div. of Hearings & Appeals April 5, 2011, ALJ Schneider)(DHS), and Rehearing FCP/130316 (Wis. Div. of Hearings & Appeals September 29, 2011, ALJ O'Brien)(DHS).

CONCLUSIONS OF LAW

The petitioner is at the nursing home level of care as defined in the FCP chapter of the Wisconsin Administrative Code.

THEREFORE, it is

ORDERED

That the petition be remanded to the agency with instructions to approve the petitioner's FCP application, in accord with the Conclusion of Law above, if she is otherwise eligible for the program. This action shall be taken within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of May, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 7, 2014.

Milwaukee Cty Dept On Aging-ARC
Office of Family Care Expansion